

Appl. No. 10/775,307  
Examiner: THOMAS, TONIAE M, Art Unit 2822  
In response to the Office Action dated August 24, 2005

Date: December 24, 2005  
Attorney Docket No. 10113741

## REMARKS

Applicant thanks the Examiner for acknowledging Applicant's claim to foreign priority and receipt of the certified copy of the priority document. Responsive to the Office Action mailed on August 24, 2005 in the above-referenced application, Applicant respectfully requests amendment of the above-identified application in the manner identified above and that the patent be granted in view of the arguments presented. No new matter has been added by this amendment.

### Present Status of Application

Claims 1-12 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hong et al (US 5,703,387) in view of Acovic et al (US 5,315,142) or unpatentable over Hoffman et al (US 5,998,261) in view of Acovic et al. Claims 13-20 are withdrawn from consideration.

In this paper, claims 1 and 7-9 are amended to recite "insulating layer" in place of "conformable oxide layer." Support for this amendment can be found in original claim 1. Non-elected claims 13-20 are canceled. Thus, on entry of this amendment, claims 1-12 remain in the application.

Reconsideration of this application is respectfully requested in light of the amendments and the remarks contained below.

### Election/Restriction

Applicant acknowledges the election of claims 1-12 in the telephone interview dated August 3, 2005. Non-elected claims 13-20 are canceled in this paper.

In view of the Examiner's restriction requirement, Applicant retains the right to present all non-elected claims in a divisional application(s).

Appl. No. 10/775,307

Examiner: THOMAS, TONIAE M, Art Unit 2822

In response to the Office Action dated August 24, 2005

Date: December 24, 2005

Attorney Docket No. 10113741

Rejections Under 35 U.S.C. 112

Claims 1-12 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Namely, the phrase "the insulating layer" lacks antecedent basis (claim 1, line 12).

In this paper, "a conformable oxide layer" in claim 1 is amended to "an insulating layer". Claims 7-9 are amended to correspond with claim 1. It is Applicant's belief that the amendment to claim 1 obviates the 112 rejections.

Rejections Under 35 U.S.C. 103(a)

Claims 1-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hong et al in view of Acovic et al or unpatentable over Hoffman et al in view of Acovic et al. Applicant respectfully traverses the rejections for the reasons as follow.

MPEP 2142 reads in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In connection with the third criteria, MPEP 2143.03 goes on the state:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of

Appl. No. 10/775,307

Examiner: THOMAS, TONIAE M, Art Unit 2822

In response to the Office Action dated August 24, 2005

Date: December 24, 2005

Attorney Docket No. 10113741

that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claim 1 recites a method for fabricating a multi-bit vertical memory cell comprising the step of forming ***an insulating layer*** over a sidewall of the trench and the bit line insulating layer to ***locally store electric charge***. It is therefore clear that in the embodiment of the invention recited in claim 1, the insulating layer is used to store electric charges.

In the rejections over Hong et al in view of Acovic et al or Hoffman et al in view of Acovic et al, the Examiner relies upon the disclosure of Acovic et al to teach this limitation. Acovic et al disclose a flash memory including a floating gate 110 to store electric charge, a control gate 40 to control the floating gate, and a dielectric layer 115 disposed there between. As described in column 5, lines 5-7 of the reference:

The floating gate 110 is isolated from the control gate layer 40 by a dielectric layer 115.

As dielectric layer 115 is used to isolate the floating gate and the control gate to prevent leakage, it is clear that ***dielectric layer 115 cannot be used to locally store electric charges***. Otherwise, data (charges) stored in the floating gate would slip to the control gate through the dielectric layer and be lost.

It is therefore Applicant's belief that even when taken in combination, the prior art references relied upon by the Examiner do not teach or suggest all the limitations of claim 1. For at least this reason, a *prima facie* case of obviousness cannot be established in connection with this claim. Furthermore, as it is Applicant's belief that a *prima facie* case of obviousness is not established for claim 1, the Examiner's arguments in regard to the dependent claims are considered moot and are not addressed here. Allowance of claims 1-12 is respectfully requested.

Appl. No. 10/775,307  
Examiner: THOMAS, TONIAE M, Art Unit 2822  
In response to the Office Action dated August 24, 2005

Date: December 24, 2005  
Attorney Docket No. 10113741

Conclusion

The Applicant believes that the application is now in condition for allowance and respectfully requests so.

Respectfully submitted,



---

Nelson A. Quintero  
Reg. No. 52,143  
Customer No. 34,283  
Telephone: (310) 401-6180

P114683NAQ